IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL REVISION APPLICATION NO. 334 OF 1999**
IN
APPEAL NO. 270 OF 1999
IN
Contempt N/Motion NO. 5791 /1998
IN
L.C.Suit No. 7699 / 1995

1. Municipal Corporation of Gr. Bombay & others. .. Petitioners. (Org.Contemnors)

V/s.

1. Ratilal Govind Mistry (Chotalia) and others. .. Respondents.

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Mr.J.Reis a/w Ms.Geeta Jogalekar for the Petitioners.

Mr.Anilkumar for the Respondent Nos.1 & 2.

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**CORAM : S. A. BOBDE, J.**

**DATED : 11th JULY, 2007.**

**P.C. :-**

. By this civil revision application, the petitioners have challenged the order dated 30th March, 1999 passed by the learned Judge of the City Civil Court, Mumbai under order 39, Rule 2A of the Code of Civil Procedure. The learned Judge has held the officers of the petitioners guilty of disobedience but has not passed any order of punishment for such

disobedience. Instead, the learned judge has resorted to admonishing and warnings, which are reproduced herein after. Thus it is this order which is challenged by the petitioners under section 115 of the Code of Civil Procedure as being without jurisdiction. The matter arises out of an order of demolition of the structure of the respondent Nos. 2 and 3 at the instance of the plaintiff i.e. the respondent No.1. The order was not immediately complied with.

2. In the suit, the petitioners were the only parties and the officers were not joined as parties.

3. Since the respondent Nos. 3 and 4 have preferred an appeal against the order, the demolition was not carried out by the corporation even though there was no order, staying the demolition. Eventually, the appeal against the order was however, dismissed on 02.02.1999 and soon thereafter, the Municipal Corporation issued a notice under section 351 of the BMC Act for demolition of the premises. On 02.03.1999, the BMC demolished the structure. The respondent No.1, the plaintiff, at whose instance the order of demolition was made, made an application dated 28th December, 1998 i.e. before the demolition of the structure. This application for disobedience was decided on 30th March,

1999 i.e. after the structure was demolished. The learned judge appears to have taken serious cognizance of the BMC not demolishing the structure after the court passed the order on 15.10.1998. The learned Judge also noticed that sufficient reasons were not given for explaining the delay in demolishing the structure. However, the learned Judge took note of the fact that when the matter was heard the BMC had in fact demolished the structure. In the result, the learned Judge held the Commissioner of the BMC and the Dy. Municipal Commissioner and some other officers guilty of indifference, deliberate disobedience and total disregard of the orders of the mandatory injunction. However, taking note of the fact that the structure has been demolished and the order had been complied with, the learned judge did not consider it fit to punish the contemnors in accordance with order 39 Rule 2A and instead passed the following sentence :

> "However, since they have ultimately demolished the suit structure. No Punitive action will be taken against them except that they are let off with stern and serious warning that they shall never show disrespect to the order of the court and never sit in judgement on the orders of the court and never to under mine the rule of law

especially for maintaining the dignity of the high post they are holding in the public office as well as to uphold the dignity and majesty of the court."

The learned Judge also directed the contemnors to pay cost in the sum of Rs. 3000/-

4. The BMC has, therefore, challenged the aforesaid order and in particular, the observations made against the officers who were not parties to the original suit. Order 39 Rule 2A under which this matter was decided reads as follows :

> **"O.39 R.2-A. Consequence of disobedience or breach of injunction.**-- (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.
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> (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured

party and shall pay the balance, if any, to the party entitled thereto."

5. It is obvious from Order 39 Rule 2A that the court, holding a person guilty of disobedience for breach of such an order can do what is prescribed by the said Rule i.e. it may order the property of the person to be attached and order such person to be detained in the civil prison for a term not exceeding three months. Rule 2A does not provide for any other punishment such as warnings much less an order, directing the parties to never show dis-respect to the orders of the court in future and to never under mine the rule of law. Apart from the fact that such punishments are not contemplated by Rule 2-A, they are indeed orders which courts are never inclined to pass because by their very nature they are difficult to enforce and may open the parties thereto to unforeseen hazard in conducting their affairs or carrying out the duties of their office. In view of the scope of order 39 Rule 2A and the impugned order, it is clear that the said order suffers from a serious error of jurisdiction. It is clear that under order 39 Rule 2A, a court may, upon holding a person guilty of disobedience either order such person to be detained in the civil prison or make an order of attachment of the property in accordance with the said Rule. There is

clearly no power and, therefore, no jurisdiction to hold a person guilty of disobedience and then issue warnings.

6. In this view of the matter, the order suffers from error of jurisdiction and is, therefore, liable to be set aside. Accordingly, the civil revision application is allowed and the impugned order is hereby set aside.

7. Order accordingly.

(S.A.BOBDE,J.)

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